IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/04/2003

CORAM

THE HON'BLE MR.B.SUBHASHAN REDDY, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE C.NAGAPPAN

W.A.No.532 of 2003
and
W.A.M.P.No.681 of 2003

The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk,
Chennai - 10. ..... Appellant

-Vs-

1. Dr.K.Janaki, B.D.S.
IC No.1-Postal Colony,
1st Street, West Mamblam,
Chennai - 35.

2. The Secretary,
The Dental Council of India,
Alwan-E-Gallib Marg,
Kotla Road,
New Delhi - 110 002.

3. K.Dhinakaran,
O/o Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai - 10. ... Respondents.

PRAYER: Writ Appeal against the order of the learned single Judge dated 21.11.2002, passed in W.P.No.21565 of 2002, as stated therein.

!For Appellant : Mr.V.R.Rajasekaran, Spl.G.P.

^For Respondent-1: Mr.K.M.Vijayan, Senior Counsel
For M/s.La & Law.

:J U D G M E N T

B.SUBHASHAN REDDY, C.J.

This writ appeal raises an important point as to whether a seat vacant in a particular reserved category can be allotted to a candidate outside the said category basing upon merit.

2. It is not a case relating to class reservation. But, reservation was carved out in admissions to MDS Course for the year 2002-2003 for service candidates. Out of the 14 seats available, 7 were earmarked for in-service candidates, who were working in hospitals, and the rest were for non-service candidates, who passed out B.D.S. The prospectus was issued prescribing 40% minimum cut off mark for admission, but one of the candidate i.e., 3rd respondent herein, did not secure 40%. Yet, he was granted admission in service quota to fill up the 50% reservation, which was challenged and the

said challenge was upheld by the learned single Judge vide order dated 21.11.2002, passed in W.P. No.21565 of 2002. Aggrieved against the said order, the present writ appeal has been filed.

3. Prospectus is the only guidance in the instant case, and we are not adverted to any rule superseding the prospectus. The prospectus for the year 2002-2003 has been issued by the Directorate of Medical Education. The entrance examination to M.D.S. Course, basing upon the said prospectus was held on 6/4/2002. The seats which are available in M.D.S. are 14 and 7 have to go to in-service candidates, while the balance 7 have to go to non-service candidates. Admissions were granted basing upon the counselling, but no candidate who secured less than 40% can be called for counselling. It is pertinent to mention that the 3rd respondent had secured only 36.86% and placed at Sl.No.286 in the Merit List, but was selected for making of the deficiency of 7, as mentioned above.

4. It is apt to extract here Clause 29 of the said Prospectus. It runs as follows;
"Admission to P.G. Degree/Diploma/Five Year M.Ch.(Neuro-Surgery)/M. D.S. Courses shall be made by counselling on the basis of merit applying the rule of reservation wherever applicable. In case of odd number of seat remaining vacant, that seat will be filled up based on merit only among Service and Non-Service candidates put together.
Candidates will be called for counselling according to their rank in batches.
Candidates can choose any of the discipline or college available at the time of counselling or in the alternative can opt to remain in the waiting list for any particular discipline.
Candidates can remain Wait List only for courses and not for colleges.
If a candidate chooses to be in the waiting list for a particular Speciality he/she will not be given firm seat in any other discipline.
A candidate who is allotted a Course cannot remain in Wait List for any other discipline.
Option once given during the counselling cannot be changed at any point of time.
Candidates who are selected in a particular speciality in M.D.S. and other Post Graduate Courses in the first counselling are not eligible for some

other specialities, if subsequent counselling are conducted and will also not be called for counselling. Candidates selected shall give an undertaking in this regard.
Candidates who are absent at the time of counselling will not be considered further.
Candidates securing less than 40% of aggregate marks shall not be called for counselling."
5. Mr.V.R.Rajasekaran, the learned Special Government Pleader appearing for the appellant strenuously contended that only an odd seat can be filled up on general merit, pooling both service and nonservice candidates, and inasmuch as there is no odd number, as the seats are only 14 and evenly distributed seven each, Clause 29 is inapplicable and that the learned single Judge erred in interfering with the admission of the 3rd respondent.

6. Mr.K.M.Vijayan, learned Senior Counsel, appearing for the 1st respondent-Caveator, submitted that as the eligible candidates were only 13, 14th is an odd number and in that context, the selection ought to be on merit by pooling both service and non-service candidates.

7. In our considered view, the matter should not be viewed in such a narrow manner, and in fact literal interpretation of "Odd Seat" is not warranted. The matter should be viewed in the light of Article 15(1) of the Indian Constitution, which mandates equal treatment, and the same is applicable to the instant case. The mandate of equal treatment guaranteed in Article 15(1) is a fundamental right and exceptions have been carved out by providing reservations, be it a class reservation, area reservation or reservation like the instant one i.e., service and non-service. The validity of reservation is not in question. Unlike public employment, which is governed by Article 16 of the Indian Constitution, whereunder some rules are framed providing carry forward, for some time, to class reservation or gender reservation, insofar admission to educational institutions are concerned, the carry forward rule is not at all applicable. The seats cannot be wasted and the education has to be imparted by admitting the students in the seats sanctioned. Equality being the rule and reservation being exception, if a candidate under exception is not available, then automatically it goes to general pool and should be filled up on merit basis. This is the correct interpretation, which can be given to Clause-29, mentioned supra, on the touchstone of Article 15(1) of the Indian Constitution. As the 3rd respondent did not secure the minimum cut off marks, the seat has to go on merit by pooling both service and nonservice candidates and indisputably the first respondent-writ petitioner is the number one candidate in the waiting list, and even though she is a non-service candidate, in view of the principles stated above, she is entitled to, as of right, for admission in to the discipline sought for. On this ground we sustain the order of the learned single Judge and dismiss this writ appeal. Consequently, connected W.A.M.P. is also dismissed. No costs.

23..04..2003.
L.R.Copies marked.
Internet:Yes
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To
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